

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TATE ALLEN ANDREWS,

Defendant-Appellant.

UNPUBLISHED

April 26, 2012

No. 303821

Grand Traverse Circuit Court

LC No. 10-011109-FH

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Defendant appeals his jury conviction of operating a motor vehicle while intoxicated, third offense, MCL 257.625(1) and (9)(c), and operating a motor vehicle with a suspended or revoked license, second offense, MCL 257.904(3)(b). The trial court sentenced defendant as an habitual offender, third offense, MCL 769.11, to concurrent sentences of 60 months' probation and 12 months in jail for the conviction of operating a vehicle while intoxicated and 6 months in jail for the conviction of operating a vehicle with a suspended or revoked license. Defendant received credit toward both sentences for 71 days served. For the reasons set forth below, we affirm.

Defendant challenges the sufficiency of the evidence supporting his conviction. A court reviewing the sufficiency of the evidence must view the evidence in the light most favorable to the prosecution and determine whether the evidence was sufficient to allow any rational trier of fact to find guilt beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). "All the elements of an offense may be proved beyond a reasonable doubt by circumstantial evidence and reasonable inferences therefrom." *People v Solmonson*, 261 Mich App 657, 661; 683 NW2d 761 (2004) (citation omitted). MCL 257.625(1) prohibits a person from operating a motor vehicle on a highway or other place open to the general public while intoxicated. A person is considered to have been operating while intoxicated if the person was "under the influence of alcoholic liquor, a controlled substance, or a combination of [the two]," MCL 257.625(1)(a), or if the person had an alcohol content of 0.08 grams or more per 210 liters of breath, MCL 257.625(1)(b). MCL 257.904 makes it a crime for a person whose license has been suspended, and who has received notification of the suspension, to operate a vehicle on a highway or other place open to the general public.

Here, defendant concedes that he was intoxicated and that his driver's license was suspended, but he contends that the prosecutor presented insufficient evidence to prove that he was operating the motor vehicle. Defendant was discovered unconscious behind the wheel of a car on the side of the road after a homeowner saw the car come to a stop in front of his house. The homeowner testified that the driver was the only occupant of the vehicle and that the driver never moved between the time the car came to a stop and the time emergency personnel arrived. Although the homeowner was unable to identify defendant at trial, the first emergency services worker on the scene identified defendant as the man he found in the driver's seat and testified that the car was in drive when he arrived on the scene. No one observed anyone else in or around the car. Defendant admitted that he drank alcohol earlier in the day, and DataMaster breath tests conducted approximately two hours after the incident showed defendant's alcohol level as 0.17 and 0.18 percent. This evidence supports a reasonable inference that defendant was driving the car, while intoxicated, before the car came to a stop on the side of the road. See *People v Smith*, 164 Mich App 767; 417 NW2d 261 (1987) (finding sufficient circumstantial evidence to support the defendant's conviction where the defendant was found alone, intoxicated, and unconscious in the driver's seat of a car that was parked on the shoulder of the interstate, 1/4 mile from the nearest exit).

We disagree with defendant's contention that the prosecution's evidence was insufficient to overcome the testimony of the defense witnesses, who testified that another man was driving the car, that the car ran out of gas, and that the other man left defendant in the car and went to get gas from his nearby home. Defendant's argument is similar to that of the defendant in *Solmonson*, 261 Mich App at 660, in which this Court affirmed the convictions of a defendant who was found in the driver's seat of a car parked on the side of the road. The engine of the car was off, but the keys were in the ignition and the engine was still warm. *Id.* The defendant in *Solmonson* conceded that he was drunk and that his license was revoked, but argued that someone else drove the car to the location where it was found. *Id.* at 660-661. Unlike the defendant in *Solmonson*, who presented no evidence in support of his defense theory, defendant in this case presented testimony in support of his claim that another man was driving the car. However, the testimony of other witnesses conflicted with defendant's version of events. This Court will not second-guess the jury's assessment of the weight and credibility of the evidence and testimony. *People v Bulmer*, 256 Mich App 33, 36; 662 NW2d 117 (2003). Further, in reviewing a claim of insufficient evidence, "this Court must make all reasonable inferences and resolve all credibility conflicts in favor of the jury verdict." *Solmonson*, 261 Mich App at 661. Although defendant provided some evidentiary support for his claim, a rational jury could have reasonably concluded, beyond a reasonable doubt, that defendant drove the vehicle while intoxicated and while his license was suspended.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Henry William Saad